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IC 6-1.1-28

Chapter 28. County Property Tax Assessment Board of Appeals

IC 6-1.1-28-1

Membership; qualifications; quorum; term

Sec. 1. (a) Each county shall have a county property tax assessment board of appeals composed of individuals who are at least eighteen (18) years of age and knowledgeable in the valuation of property. In addition to the county assessor, only one (1) other individual who is an officer or employee of a county or township may serve on the board of appeals in the county in which the individual is an officer or employee. Subject to subsections (d) and (e), the fiscal body of the county shall appoint two (2) individuals to the board. At least one (1) of the members appointed by the county fiscal body must be a certified level two or level three assessor-appraiser. Subject to subsections (d) and (e), the board of commissioners of the county shall appoint two (2) freehold members so that not more than three (3) of the five (5) members may be of the same political party and so that at least three (3) of the five (5) members are residents of the county. At least one (1) of the members appointed by the board of county commissioners must be a certified level two or level three assessor-appraiser. If the county assessor is a certified level two or level three assessor-appraiser, the board of county commissioners may waive the requirement in this subsection that one (1) of the freehold members appointed by the board of county commissioners must be a certified level two or level three assessor-appraiser. A person appointed to a property tax assessment board of appeals may serve on the property tax assessment board of appeals of another county at the same time. The members of the board shall elect a president. The employees of the county assessor shall provide administrative support to the property tax assessment board of appeals. The county assessor is a voting member of the property tax assessment board of appeals. The county assessor shall serve as secretary of the board. The secretary shall keep full and accurate minutes of the proceedings of the board. A majority of the board that includes at least one (1) certified level two or level three assessor-appraiser constitutes a quorum for the transaction of business. Any question properly before the board may be decided by the agreement of a majority of the whole board.

(b) The county assessor, county fiscal body, and board of county commissioners may agree to waive the requirement in subsection (a) that not more than three (3) of the five (5) members of the county property tax assessment board of appeals may be of the same political party if it is necessary to waive the requirement due to the absence of certified level two or level three Indiana assessor-appraisers:

(1) who are willing to serve on the board; and

(2) whose political party membership status would satisfy the requirement in subsection (c)(1).

(c) If the board of county commissioners is not able to identify at

least two (2) prospective freehold members of the county property tax assessment board of appeals who are:

(1) residents of the county;

(2) certified level two or level three Indiana assessor-appraisers; and

(3) willing to serve on the county property tax assessment board of appeals;

it is not necessary that at least three (3) of the five (5) members of the county property tax assessment

board of appeals be residents of the county.

(d) Except as provided in subsection (e), the term of a member of the county property tax assessment board of appeals appointed under subsection (a):

(1) is one (1) year; and

(2) begins January 1.

(e) If:

(1) the term of a member of the county property tax assessment board of appeals appointed under subsection (a) expires;

(2) the member is not reappointed; and

(3) a successor is not appointed;

the term of the member continues until a successor is appointed.

(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.7-1983, SEC.8; P.L.24-1986, SEC.21; P.L.6-1997, SEC.91; P.L.198-2001, SEC.65; P.L.178-2002, SEC.35; P.L.228-2005, SEC.24; P.L.219-2007, SEC.72.

IC 6-1.1-28-2

Oath of members

Sec. 2. Before performing any of the member's duties, each member of the county property tax assessment board of appeals shall take and subscribe to the following oath:

STATE OF INDIANA)

) SS:

COUNTY OF _____)

I, _____, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of Indiana, and that I will faithfully and impartially discharge my duty under the law as a member of the Property Tax Assessment Board of Appeals for said County; that I will, according to my best knowledge and judgment, assess, and review the assessment of all the property of said county, and I will in no case assess any property at more or less than is provided by law, so help me God.

_____

Member of The Board

Subscribed and sworn to before me this ___ day of _____, 20___.

_____

County Auditor

This oath shall be administered by and filed with the county auditor.

(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.6-1997, SEC.92; P.L.2-2005, SEC.19.

IC 6-1.1-28-3

Compensation of members

Sec. 3. The members of the county property tax assessment board of appeals shall receive compensation on a per diem basis for each day of actual service. The county council shall fix the rate of this compensation. The county assessor shall keep an attendance record for each meeting of the county property tax assessment board of appeals. At the close of each annual session, the county assessor shall certify to the county board of commissioners the number of days actually served by each member. The

county board of commissioners may not allow claims for service on the county property tax assessment board of appeals for more days than the number of days certified by the county assessor. The compensation provided by this section shall be paid from the county treasury.
(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.6-1997, SEC.93.

IC 6-1.1-28-4
Meetings; location

Sec. 4. The county property tax assessment board of appeals shall meet either in the room of the board of commissioners in the county courthouse or in some other room provided by the county board of commissioners.
(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.6-1997, SEC.94.

IC 6-1.1-28-5
Repealed

(Repealed by P.L.33-1994, SEC.4.)

IC 6-1.1-28-6
Notice of annual session

Sec. 6. The county assessor shall give notice of the time, place, and purpose of each annual session of the county property tax assessment board. The county assessor shall give the notice two (2) weeks before the first meeting of the board by:

(1) publication in two (2) newspapers of general circulation which are published in the county and which represent different political parties; or

(2) publication in one (1) newspaper of general circulation published in the county if the requirements of clause (1) of this section cannot be satisfied; or

(3) posting in three (3) public places in each township of the county if a newspaper of general circulation is not published in the county.
(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.1-2001, SEC.4; P.L.245-2003, SEC.20.

IC 6-1.1-28-7
Repealed

(Repealed by P.L.41-1993, SEC.54.)

IC 6-1.1-28-8
Duration of session; expenses and per diem; sessions called by department of local government finance

Sec. 8. (a) The county property tax assessment board shall remain in session until the board's duties are complete.

(b) All expenses and per diem compensation resulting from a session of a county property tax assessment board that is called by the department of local government finance under subsection (c) shall be paid by the county auditor, who shall, without an appropriation being required, draw warrants on county funds not otherwise appropriated.

(c) The department of local government finance may also call a session of the county property tax assessment board after completion of a general reassessment of real property. The department of local government finance shall fix the time for and duration of the session.
(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.69-1983, SEC.8; P.L.41-1993, SEC.22; P.L.1-2001, SEC.5; P.L.90-2002, SEC.215.

IC 6-1.1-28-9
Powers

Sec. 9. (a) A county property tax assessment board of appeals may:

(1) subpoena witnesses;

(2) examine witnesses, under oath, on the assessment or valuation of property;

(3) compel witnesses to answer its questions relevant to the assessment or valuation of property; and

(4) order the production of any papers related to the assessment or valuation of property.

(b) The county sheriff shall serve all process issued under this section which are not served by the county assessor and shall obey all orders of the board.

(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.6-1997, SEC.95.

IC 6-1.1-28-10
Field representatives and hearing examiners; compensation

Sec. 10. (a) Subject to the limitations contained in subsection (b), a county on behalf of the property tax assessment board of appeals may employ and fix the compensation of as many field representatives and hearing examiners as are necessary to promptly and efficiently perform the duties and functions of the board. A person employed under this subsection must be a person who is certified in Indiana as a level two or level three assessor-appraiser by the department of local government finance.

(b) The number and compensation of all persons employed under

this section are subject to the appropriations made for that purpose by the county council.

(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.12-1992, SEC.27; P.L.6-1997, SEC.96; P.L.90-2002, SEC.216; P.L.219-2007, SEC.73.

IC 6-1.1-28-11
Field representatives and hearing examiners; powers and duties

Sec. 11. Field representatives and hearing examiners employed under section 10 of this chapter, when authorized by the county property tax assessment board of appeals, have the powers granted to the county property tax assessment board of appeals for the review of, and hearings on, assessments. The field representatives and hearing examiners shall report their findings to the board in writing at the conclusion of each review or hearing. After receipt of the written report, the board may take further evidence or hold further hearings. The final decision on each matter shall be made by the board based upon the field representative's or hearing officer's report, any additional evidence taken by the board, and any records that the board considers pertinent.

(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.6-1997, SEC.97.

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IC 6-1.1-13
Chapter 13. Review of Current Assessments by County Property Tax Assessment Board of Appeals

IC 6-1.1-13-1
Powers of board; notice of review
Sec. 1. The powers granted to each county property tax assessment board of appeals under this chapter apply only to the tangible property assessments made with respect to the last preceding assessment date. Before a county property tax assessment board of appeals changes any valuation or adds any tangible property and the value of it to a return or the assessment rolls under this chapter, the board shall give prior notice by mail to the taxpayer. The notice must state a time when and place where the taxpayer may appear before the board. The time stated in the notice must be at least ten (10) days after the date the notice is mailed.
(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.6-1997, SEC.60.

IC 6-1.1-13-2
County assessment lists; recommendations for alterations
Sec. 2. When the county property tax assessment board of appeals convenes, the county auditor shall submit to the board the assessment list of the county for the current year as returned by the township assessors (if any) and as amended and returned by the county assessor. The county assessor shall make recommendations to the board for corrections and changes in the returns and assessments. The board shall consider and act upon all the recommendations.
(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by Acts 1981, P.L.64, SEC.3; P.L.12-1992, SEC.18; P.L.84-1995, SEC.4; P.L.6-1997, SEC.61; P.L.146-2008, SEC.133.

IC 6-1.1-13-3
Additions of undervalued or omitted property to list
Sec. 3. A county property tax assessment board of appeals shall, on its own motion or on sufficient cause shown by any person, add to the assessment lists the names of persons, the correct assessed value of undervalued or omitted personal property, and the description and correct assessed value of real property undervalued on or omitted from the lists.
(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.6-1997, SEC.62.

IC 6-1.1-13-4
Correction of errors in assessment list
Sec. 4. A county property tax assessment board of appeals shall correct any errors in the names of persons, in the description of tangible property, and in the assessed valuation of tangible property appearing on the assessment lists. In addition, the board shall do whatever else may be necessary to make the assessment lists and

returns comply with the provisions of this article and the rules and regulations of the department of local government finance.

(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.6-1997, SEC.63; P.L.90-2002, SEC.126.

IC 6-1.1-13-5
Reduction or increase of assessed value

Sec. 5. A county assessor shall reduce or increase the assessed value of any tangible property in order to attain a just and equal basis of assessment between the taxpayers of the county.
(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.6-1997, SEC.64.

IC 6-1.1-13-6
Equalization among townships

Sec. 6. A county assessor shall inquire into the assessment of the classes of tangible property in the various townships of the county after March 1 in the year in which the general reassessment becomes effective. The county assessor shall make any changes, whether increases or decreases, in the assessed values which are necessary in order to equalize these values in and between the various townships of the county. In addition, the county assessor shall determine the percent to be added to or deducted from the assessed values in order to make a just, equitable, and uniform equalization of assessments in and between the townships of the county.
(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.6-1997, SEC.65; P.L.256-2003, SEC.8.

IC 6-1.1-13-7
Uniform equalization of assessment between townships; hearings

Sec. 7. If a county assessor proposes to change assessments under section 6 of this chapter, the property tax assessment board of appeals shall hold a hearing on the proposed changes before July 15 in the year in which a general assessment is to commence. It is sufficient notice of the hearing and of any changes in assessments ordered by the board subsequent to the hearing if the board gives notice by publication once either in:

(1) two (2) newspapers which represent different political parties and which are published in the county; or

(2) one (1) newspaper only, if two (2) newspapers which represent different political parties are not published in the county.
(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.6-1997, SEC.66.

IC 6-1.1-13-8
Aggregate township adjustments; limitations on adjustments; setting aside

Sec. 8. A county assessor may not reduce the aggregate assessment of all the townships of the county below a just, equitable,

and uniform assessment. A county assessor may not increase the aggregate assessment beyond the amount actually necessary for a proper and just equalization of assessments. If the county assessor finds that the aggregate assessment of a township is too high or too low or that it is generally so unequal as to render it impracticable to equalize the aggregate assessment, the county assessor may set aside the assessment of the township and order or conduct a new assessment. To order or conduct a new assessment, the county assessor must give notice and hold a hearing in the same manner as required under section 7 of this chapter.
(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.6-1997, SEC.67.

IC 6-1.1-13-9
Repealed

(Repealed by P.L.69-1983, SEC.12.)

IC 6-1.1-13-10
Repealed
(Repealed by P.L.69-1983, SEC.12.)

IC 6-1.1-13-11
Repealed
(Repealed by P.L.69-1983, SEC.12.)

IC 6-1.1-13-12
Limitation on altering assessed valuation of personal property

Sec. 12. If a taxpayer's personal property return for a year substantially complies with the provisions of this article and the regulations of the department of local government finance, the county property tax assessment board of appeals may change the assessed value claimed by the taxpayer on the return only within the time period prescribed in IC 6-1.1-16-1.
(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by P.L.6-1997, SEC.68; P.L.90-2002, SEC.127.

IC 6-1.1-15

Chapter 15. Procedures for Review and Appeal of Assessment and Correction of Errors

IC 6-1.1-15-0.5

"County board"

Sec. 0.5. As used in this chapter, "county board" means the county property tax assessment board of appeals.

As added by P.L.219-2007, SEC.37.

IC 6-1.1-15-1 Version b

Review by county board; initiation; preliminary informal meeting; hearing; determination

Note: This version of section effective 7-1-2008.

Sec. 1. (a) A taxpayer may obtain a review by the county board of a county or township official's action with respect to either or both of the following:

(1) The assessment of the taxpayer's tangible property.

(2) A deduction for which a review under this section is authorized by any of the following:

(A) IC 6-1.1-12-25.5.
(B) IC 6-1.1-12-28.5.
(C) IC 6-1.1-12-35.5.
(D) IC 6-1.1-12.1-5.
(E) IC 6-1.1-12.1-5.3.
(F) IC 6-1.1-12.1-5.4.

(b) At the time that notice of an action referred to in subsection (a) is given to the taxpayer, the taxpayer shall also be informed in writing of:

(1) the opportunity for a review under this section, including a preliminary informal meeting under subsection (h)(2) with the county or township official referred to in this subsection; and

(2) the procedures the taxpayer must follow in order to obtain a review under this section.

(c) In order to obtain a review of an assessment or deduction effective for the assessment date to which the notice referred to in subsection (b) applies, the taxpayer must file a notice in writing with the county or township official referred to in subsection (a) not later than forty-five (45) days after the date of the notice referred to in subsection (b).

(d) A taxpayer may obtain a review by the county board of the assessment of the taxpayer's tangible property effective for an assessment date for which a notice of assessment is not given as described in subsection (b). To obtain the review, the taxpayer must file a notice in writing with the township assessor, or the county assessor if the township is not served by a township assessor. The right of a taxpayer to obtain a review under this subsection for an assessment date for which a notice of assessment is not given does not relieve an assessing official of the duty to provide the taxpayer with the notice of assessment as otherwise required by this article. For an assessment date in a year before 2009, the notice must be filed on or before May 10 of the year. For an assessment date in

a year after 2008, the notice must be filed not later than the later of:

(1) May 10 of the year; or

(2) forty-five (45) days after the date of the statement mailed by the county auditor under IC 6-1.1-17-3(b).

(e) A change in an assessment made as a result of a notice for review filed by a taxpayer under subsection (d) after the time prescribed in subsection (d) becomes effective for the next assessment date. A change in an assessment made as a result of a notice for review filed by a taxpayer under subsection (c) or (d) remains in effect from the assessment date for which the change is made until the next assessment date for which the assessment is changed under this article.

(f) The written notice filed by a taxpayer under subsection (c) or (d) must include the following information:

(1) The name of the taxpayer.

(2) The address and parcel or key number of the property.

(3) The address and telephone number of the taxpayer.

(g) The filing of a notice under subsection (c) or (d):

(1) initiates a review under this section; and

(2) constitutes a request by the taxpayer for a preliminary informal meeting with the official referred to in subsection (a).

(h) A county or township official who receives a notice for review filed by a taxpayer under subsection (c) or (d) shall:

(1) immediately forward the notice to the county board; and

(2) attempt to hold a preliminary informal meeting with the taxpayer to resolve as many issues as possible by:

(A) discussing the specifics of the taxpayer's assessment or deduction;

(B) reviewing the taxpayer's property record card;

(C) explaining to the taxpayer how the assessment or deduction was determined;

(D) providing to the taxpayer information about the statutes, rules, and guidelines that govern the determination of the assessment or deduction;

(E) noting and considering objections of the taxpayer;

(F) considering all errors alleged by the taxpayer; and

(G) otherwise educating the taxpayer about:

(i) the taxpayer's assessment or deduction;

(ii) the assessment or deduction process; and

(iii) the assessment or deduction appeal process.

(i) Not later than ten (10) days after the informal preliminary meeting, the official referred to in subsection (a) shall forward to the county auditor and the county board the results of the conference on a form prescribed by the department of local government finance that must be completed and signed by the taxpayer and the official. The form must indicate the following:

(1) If the taxpayer and the official agree on the resolution of all assessment or deduction issues in the review, a statement of:

(A) those issues; and

(B) the assessed value of the tangible property or the amount of the deduction that results from the resolution of those issues in the manner agreed to by the taxpayer and the official.

(2) If the taxpayer and the official do not agree on the resolution of all assessment or deduction issues in the review:

(A) a statement of those issues; and

(B) the identification of:

(i) the issues on which the taxpayer and the official agree; and

(ii) the issues on which the taxpayer and the official disagree.

(j) If the county board receives a form referred to in subsection (i)(1) before the hearing scheduled under subsection (k):

(1) the county board shall cancel the hearing;

(2) the county official referred to in subsection (a) shall give notice to the taxpayer, the county board, the county assessor, and the county auditor of the assessment or deduction in the amount referred to in subsection (i)(1)(B); and

(3) if the matter in issue is the assessment of tangible property, the county board may reserve the right to change the assessment under IC 6-1.1-13.

(k) If:

(1) subsection (i)(2) applies; or

(2) the county board does not receive a form referred to in subsection (i) not later than one hundred twenty (120) days after the date of the notice for review filed by the taxpayer under subsection (c) or (d);

the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice. The county board shall, by mail, give notice of the date, time, and place fixed for the hearing to the taxpayer and the county or township official with whom the taxpayer filed the notice for review. The taxpayer and the county or township official with whom the taxpayer filed the notice for review are parties to the proceeding before the county board. The county assessor is recused from any action the county board takes with respect to an assessment determination by the county assessor.

(l) At the hearing required under subsection (k):

(1) the taxpayer may present the taxpayer's reasons for disagreement with the assessment or deduction; and

(2) the county or township official with whom the taxpayer filed the notice for review must present:

(A) the basis for the assessment or deduction decision; and

(B) the reasons the taxpayer's contentions should be denied.

(m) The official referred to in subsection (a) may not require the taxpayer to provide documentary evidence at the preliminary informal meeting under subsection (h). The county board may not require a taxpayer to file documentary evidence or summaries of statements of testimonial evidence before the hearing required under subsection (k). If the action for which a taxpayer seeks review under this section is the assessment of tangible property, the taxpayer is not required to have an appraisal of the property in order to do the following:

(1) Initiate the review.

(2) Prosecute the review.

(n) The county board shall prepare a written decision resolving all of the issues under review. The county board shall, by mail, give notice of its determination not later than one hundred twenty (120) days after the hearing under subsection (k) to the taxpayer, the

official referred to in subsection (a), the county assessor, and the county auditor.

(o) If the maximum time elapses:

(1) under subsection (k) for the county board to hold a hearing; or

(2) under subsection (n) for the county board to give notice of its determination;

the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses. *(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by Acts 1977, P.L.70, SEC.1; P.L.74-1987, SEC.10; P.L.41-1993, SEC.11; P.L.6-1997, SEC.71; P.L.198-2001, SEC.41; P.L.178-2002, SEC.18; P.L.1-2004, SEC.13 and P.L.23-2004, SEC.14; P.L.199-2005, SEC.6; P.L.162-2006, SEC.2; P.L.219-2007, SEC.38; P.L.1-2008, SEC.1; P.L.146-2008, SEC.137.*

Evidence in Property Tax Appeals

DISCLAIMER

The IBTR offers this discussion for informational purposes only and may revise its contents at any time without notice. The discussion is not intended, nor should it be construed, as a ruling on any specific appeal, and parties shall not cite it in any proceeding. Parties may consult the Indiana Code, Board rules, Tax Court decisions, and IBTR decisions for more information about how to present a case to the IBTR.

The Department of Local Government Finance's administrative rules define the "true tax value" of real property as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property."[1] The appraisal profession traditionally has used three methods to determine a property's market value: the cost, sales-comparison, and income approaches.[2] Id. at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach contained in the Real Property Assessment Guidelines for 2002 – Version A.

An assessment determined using the Guidelines' cost approach is presumptively accurate.[3] A taxpayer may rebut that presumption and establish a different value by offering evidence that is consistent with the Manual's definition of true tax value.[4] A professional appraisal prepared in accordance with that definition often will suffice.[5] Actual construction costs, sales information for the subject or comparable properties, and any other information compiled using generally accepted appraisal principles may also be offered to rebut the assessment's presumption of correctness.[6]

Whatever type of evidence the parties offer, they must explain its significance. The IBTR will not assign any probative weight to conclusory statements. **And parties must always explain how their evidence relates to the appealed property's market value-in-use as of the relevant valuation date.** For assessment years 2002-2005, the valuation date is January 1, 1999. For assessment years from 2006 forward, that date changes. Click here for more information about valuation dates.

With that in mind, the following discussion briefly summarizes the most common generally accepted methods for valuing real property.

Cost Approach

The cost approach assumes that buyers will pay no more for a property than it would cost to buy an equally desirable substitute parcel of land and build an equally desirable substitute improvement. An improvement's value is determined by first estimating the cost to construct a new improvement and then subtracting accrued depreciation. The land's value as if vacant is then added to determine the property's overall value.[7] To learn more about the cost approach, click here. You may also wish to consult manuals and expert treatises, such as INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, PROPERTY APPRAISAL AND ASSESSMENT ADMINISTRATION (1990) or APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE (12th ed. 2001).

Actual construction costs

> The Manual expressly recognizes that parties may use actual—rather than estimated—construction costs to prove a property's market value-in-use. When using actual costs, parties must identify all direct and indirect costs required to construct improvements. Direct costs include, but are not limited to, labor, materials, supervision, utilities used during construction, and equipment rental. Indirect cost include, but are not limited to, building permits, fees, insurance, taxes, construction interest, overhead, profit and professional fees. Construction costs must represent all costs (direct and indirect) regardless of whether they were realized, as in the case of do-it-yourself construction.[8]

Sales-Comparison Approach

The sales-comparison approach assumes that potential buyers will pay no more for a property than it would cost to buy an equally desirable substitute property in the marketplace. In applying this approach, one must identify comparable improved properties that have sold and adjust their sale prices to reflect the subject property's total value. The adjustments reflect differences between the subject and comparable properties that affect value. Those adjustments are quantified using objectively verifiable market evidence.[9] To learn more about the sales-comparison approach, click here. You may also wish to consult manuals and expert treatises, such as INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, PROPERTY APPRAISAL AND ASSESSMENT ADMINISTRATION (1990) or APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE (12th ed. 2001).

Income Approach

This approach assumes that buyers will pay no more for a property than it would cost to buy an equally desirable substitute investment offering the same risk and return. The property's value flows from the rent it will produce for its owner.[10] Thus, the income approach requires capitalizing the property's income. They may apply either direct- or yield-capitalization methods. Examples of direct capitalization include applying an overall-capitalization rate to one year of a property's net operating income, or using a gross-rent multiplier. Yield-capitalization models tend to involve more variables than direct-capitalization models, and they more explicitly attempt to simulate investors' decision-making processes. To learn more about the income approach, click here. You may also wish to consult manuals and expert treatises, such as INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, PROPERTY APPRAISAL AND ASSESSMENT ADMINISTRATION (1990) or APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE (12th ed. 2001).

Sale of the Subject Property

Parties may also offer the subject property's actual sale price to show its market value. The sale must have been an arms-length transaction and must otherwise reflect the property's market value. Factors relevant to determining whether a property's sale price reflects its market value include:

- Whether the buyer and seller were typically motivated;
- Whether both parties were well informed and acted in what they considered to be their best interests;
- Whether a reasonable time was allowed for exposing the property to the open market;
- Whether the buyer made payment in cash or financial terms comparable thereto; and
- Whether the price was affected by special financing or concessions.[11]

2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 Ind. Admin. Code 2.3-1-2).
Id. at 3, 13-15.
Eckerling v. Wayne Twp. Assessor, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006); see also MANUAL at 6.
Id.
See Id.; see also Kooshtard Prop. VI, LLC v. White River Twp. Assessor, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).
MANUAL at 5.
MANUAL at 13.
REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, intro at 1.
MANUAL at 13-14.
MANUAL at 14.
See MANUAL at 10.

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 71-026-02-1-5-00113
Petitioners: Paul and Shirley Kinney
Respondent: Portage Township Assessor (St. Joseph County)
Parcel #: 18-6056-1921
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the St. Joseph County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated January 20, 2004.

2. The Petitioners received notice of the decision of the PTABOA on August 28, 2004.

3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on September 20, 2004. The Petitioners elected to have this case heard in small claims.

4. The Board issued a notice of hearing to the parties dated April 4, 2004.

5. The Board held an administrative hearing on May 24, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.

6. Persons present and sworn in at hearing:

   a) For Petitioner: Paul Kinney, Property Owner

   b) For Respondent: Rosemary Mandrici, Portage Township Assessor
   David Wesolowski, St. Joseph County Assessor
   Dennis Dillman, PTABOA Member
   Ralph Wolfe, PTABOA Member
   Ross Portolese, PTABOA Member

   Terrance Wozniak appeared as counsel for the Portage Township Assessor and the St. Joseph County PTABOA.

Facts

7. The subject property is a single-family rental property on a lot measuring 44' x 125', located at 1101 33rd Street, South Bend, in Portage Township, St. Joseph County.

8. The ALJ did not conduct an on-site visit of the property.

9. The PTABOA determined the assessed value of the subject property to be $4,200 for the land and $61,600 for the improvements, for a total assessed value of $65,800.

10. The Petitioners requested an assessment that was "fairer."

Issue

11. Summary of Petitioners' contentions in support of an error in the assessment:

a. The Petitioners contend that the taxes on the subject property are too high. *P. Kinney testimony.* According to the Petitioners, the taxes on the property have risen from $600 in 1995 to a current tax bill of $3,300. *Id.* Although they testified that they charge $950 per month in rent, the Petitioners contend that there is a mortgage on the subject property of approximately sixty thousand dollars, where they pay $600 per month. *Id.* The Petitioners argue that they also pay more than $300 a month in taxes. *Id.* Thus, the Petitioners assert, the property is not an investment but a loss. *Id.* The Petitioners, however, admitted that they do not have a mortgage exemption on the subject property which could be one reason why the taxes are higher. *Id.*

b. The Petitioners further contend that the taxes on the subject property are higher than on other properties in the same area. *P. Kinney testimony.* In support of this contention, the Petitioners submitted real estate listings for thirteen properties that sold in the River Park area. *P. Kinney testimony; Petitioner Exhibits 15, and 19 – 29.*[1] According to the Petitioners, the property at 602 30th Street sold for $96,000 on April 27, 2006. *Id.* The Petitioners contend that the taxes on this property are $2,293. *Id.* Similarly, the Petitioners argue, the property at 820 28th Street sold for $85,900 and the taxes are $703. *Id.* The Petitioners allege that the property at 924 27th Street sold for $77,900 on July 7, 2005, and the taxes on the property are $1,195. *Id.* Similarly, the property at 1234 33rd Street sold for $89,500 on August 5, 2005, and the taxes are $779. *Id.* According to the Petitioners, 3402 Pleasant sold for $75,000 on March 31, 2006, and the taxes are $534. *Id.* Likewise, the Petitioners contend that 754 24th Street sold for $64,900 on November 10, 2005, and the taxes are $335. *Id.* Further, 925 36th Street sold for $37,500 on December 22, 2005, and the taxes are $862 and 1119 25th Street sold for $94,900 on August 17, 2005, and the taxes are $948. *Id.* According to the Petitioners, 3110 Vine sold for $64,900 on June

[1] Respondent's counsel objected to the admission of the Petitioner's evidence of the 2005 and 2006 sales of these thirteen properties on the basis of their relevancy to the 2002 assessment. The ALJ determined that the Respondent's objection goes to the weight of the evidence and not the admissibility and admitted the exhibits.

3, 2005, and the taxes are $758 and 706 35th Street sold for $89,900 on April 27, 2006, and the taxes are $1,004. *Id.* Finally, the Petitioners contend, 702 35th Street sold for $86,400 on March 28, 2006, and the taxes are $796; 926 27th Street sold for $89,900 on July 21, 2005, and the taxes are $1,104; and 626 25th Street sold for $79,000 on February 28, 2006, and the taxes are $1,710. *Id.* The Petitioners testified that the sale properties varied in size, amenities, lot sizes and "other things that go to make up the sale price." *P. Kinney testimony.* The Petitioners also stated that the properties could not be compared to one another because they were "up and down." *Id.* In response to questioning, the Petitioners testified that they did no know whether the sale properties were owner occupied or a rental unit like the subject property. *P. Kinney response.*

c. Finally, the Petitioners claim that the assessed value for the subject property was excessive because the neighborhood was not an expensive one. *P. Kinney testimony.* According to the Petitioners, even though the property may be the nicest house in the area there are drawbacks such as the lots being too narrow (40 – 45 feet) to be built on. *Id.*

12. Summary of Respondent's contentions in support of the assessment:

a. The Respondent contends that the current assessed value of $65,800 is appropriate for the subject rental property. *Mandrici testimony.* The Respondent testified that the cost approach was used to determine the assessed value for the subject property. *Id.* Even under the gross rent multiplier (GRM) method of valuing rental properties of 1 – 4 units, however, the Respondent argues that the subject property was assessed correctly. *Id.* According to the Respondent, based on the application of an average GRM of 6[2] for the township and applied to the monthly rent for the subject property[3], the values determined would be $64,800 at $900 per month and $68,400 at $950 per month. *Id.*

b. The Respondent further contends that the subject property is assessed fairly when compared to other properties in the subject property's neighborhood. *Mandrici testimony.* In support of this contention, the Respondent submitted a real estate listing price sheet for a number of properties located on 33rd Street, which is the subject property's street. *See Respondent Exhibit 8.* The Respondent asserts that the $65,800 assessed value of the subject property falls within the $39,900 to $98,900 range of the listing prices for the properties on 33rd Street. *Mandrici testimony.*

c. Finally, the Respondent argues that the Petitioners' sales "comparables" were not relevant to the 2002 assessment year. *Mandrici testimony.* According to the Respondent, the sale prices of properties in 2005 and 2006 have no bearing on the

[2] Ms. Mandrici testified that the GRM range for the Township of Portage was 5 – 7 with the average of "6" being used.

[3] Ms. Mandrici testified that at the PTABOA hearing the Petitioners indicated that their monthly rent received was $900 for the subject property and at this hearing the Petitioners are indicating that they are receiving $950.

assessed valued assigned to the subject property for the 2002 assessment year under appeal which is based on a January 1, 1999, valuation. *Id.*

Record

13. The official record for this matter is made up of the following:

a. The Petition,

b. The tape recording of the hearing labeled BTR #6239,

c. Exhibits:[4]

Petitioner Exhibit 1 - Evidence cover letter dated May 23, 2006,
Petitioner Exhibit 2 thru 6 - Form 131 Petition,
Petitioner Exhibit 7 thru 9 – Form 115 dated August 28, 2004,
Petitioner Exhibit 10 & 11 – Letter to the Board dated September 15, 2004,
Petitioner Exhibit 12, 13, 14 – Copies of tax bills for 2000 pay 2001,
Petitioner Exhibit 15 – Listing data for 602 30th Street from the Association of Realtors,
Petitioner Exhibit 16 – Assessor data for 1101 33rd Street,
Petitioner Exhibit 19 thru 29 – Listing data for multiple properties from the Association of Realtors,
Petitioner Exhibit 30 – Letter to Kinney family from Ryan Dvorak dated February 2003,
Petitioner Exhibit 31 – Form 11 for the subject property dated December 1, 2003,
Petitioner Exhibit 32 – Form 114 for the subject property dated August 12, 2004,
Petitioner Exhibit 33 – Letter to the Assessor from Paul Kinney dated January 5, 2004,
Petitioner Exhibit 34 – Letter to Representative Dvorak from Paul Kinney Dated July 28, 2004.

Respondent Exhibit 1 – Form 131 petition,
Respondent Exhibit 2 – Notification of Final Assessment Determination (Form 115),
Respondent Exhibit 3 – PTABOA Record of Hearing,
Respondent Exhibit 4 – Letter to John Voorde dated January 5, 2004,
Respondent Exhibit 5 – Letter to taxpayer from Rosemary Mandrici dated July 21, 2004,
Respondent Exhibit 6 – Subject property record card (PRC),
Respondent Exhibit 7 – Letter the Board from Paul and Shirley Kinney dated September 15, 2004,
Respondent Exhibit 8 – Remax property listings

Board Exhibit A - Form 131 petition,

[4] The Petitioners' exhibits are designated by the page numbers. Several pages may make up a single document.

Board Exhibit B - Notice of Hearing,
Board Exhibit C – Sign-in Sheet.

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").

c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.; Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:

a. The Petitioners contend that the real estate taxes paid on the subject property are higher than those on other properties within the subject property's neighborhood. *P. Kinney testimony.* The Petitioners further contend that the current increase in their taxes is excessive when compared to other properties that have sold. *Id.; Petitioner Exhibits 19 – 29.*

b. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001), *citing Matonovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999); *Hoogenboom-Nofziger v. State Board of Tax Commissioners*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). By statute, the Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or county property tax

assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1. The Board has no jurisdiction over matters involving local tax rates.[5]

c. Real property in Indiana is assessed on the basis of its "true tax value." *See* Ind. Code § 6-1.1-31-6(c). The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real estate as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*

d. To the extent that the Petitioners' arguments can be seen to raise an objection to the property's assessed values, the Petitioners essentially present sales comparison evidence. MANUAL at 2 (the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market."). To introduce evidence of comparable properties, however, a taxpayer must explain how the properties are comparable. *See Blackbird Farm Apartments v. Department of Local Government Finance,* 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain how the properties were comparable). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long,* at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id. See also Hoogenboom-Nofziger,* 715 N.E.2d at 1024 (holding that taxpayer failed to make a prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries v. Department of Local Government Finance,* 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make a prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).

[5] Further, each tax year stands on its own. *Barth v. State Board of Tax Commissioners*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). Consequently, what taxes the Petitioners paid in prior years would have no relevance or probative value in determining the Petitioners' 2002 taxes or assessment.

e. Here the Petitioners presented Assessor's information and MLS listings for thirteen properties. In addition, the Petitioners testified as to the address of each property, the sale price and the date of sale, and the taxes paid on each property. While the Petitioners submitted evidence on thirteen properties, the Petitioners made little, if any, attempt to explain why or how the properties were comparable to the subject property as required by the court in *Long*. Further, the Petitioners failed to show how sales of properties that the Petitioners themselves admit cannot be compared, that sold for prices ranging from $37,500 to $96,000, are probative of the assessed value of the subject property. The Petitioners provided no comparison of square footages, lot sizes, or amenities such as attics, basements, number of bathrooms, garages or occupancy. Moreover, the sales cited by the Petitioners all occurred in 2005 and 2006. This is far too remote from the January 1, 1999, statutory valuation date to be probative of the subject property's 2002 assessed value. Thus, to the extent that the Petitioners can be seen as objecting to their assessed value, the Petitioners failed to raise a prima facie case that their assessment is in error.

f. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to provide sufficient evidence to establish a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

_____
Commissioner,
Indiana Board of Tax Review

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #:	**41-018-06-1-5-00001**
Petitioners:	**Ray R. & Lois A. Raufeisen**
Respondent:	**Johnson County Assessor**
Parcel #:	**41-07-18-021-054.000-018**
Assessment Year:	**2006**

The Indiana Board of Tax Review ("Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Ray and Lois Raufeisen filed a written request asking the Johnson County Property Tax Assessment Board of Appeals ("PTABOA") to reduce their property's assessment.

2. After a preliminary conference, the Needham Township Assessor lowered the subject property's assessment from $209,700 to $197,000. On September 17, 2007, however, the PTABOA issued its determination listing the subject property's assessment at $209,700.

3. The Raufeisens then timely filed a Form 131 petition with the Board asking it to review their assessment. They elected to proceed under the Board's rules for small claims.

4. On December 18, 2007, the Board held an administrative hearing through its Administrative Law Judge, Alyson Kunack (ALJ).

5. Persons present and sworn in at hearing:

   a) For the Raufeisens: Ray R. Raufeisen

   b) For the Johnson County Assessor: Mark Alexander, Johnson County Assessor's Office

Facts

6. The property is a single-family residence located at 1084 Paris Drive in Franklin, Indiana.

7. Neither the Board nor the ALJ inspected the property.

8. The PTABOA's final determination lists the following values:

Land: $40,600 Improvements: $169,100 Total: $209,700

9. The parties, however, agreed that the "assessment of record" was the following amount determined by the Needham Township Assessor after a preliminary conference:
Land: $35,200 Improvements: $161,800 Total: $197,000

10. The Raufeisens did not request a specific value.

Parties' Contentions

11. The Raufeisens offered the following evidence and arguments:

a) The Raufeisens believe that their property's assessment is too high. *Raufeisen argument.* In 2001, the Raufeisens traded a property located at 1855 Longest Drive for the subject property. It was an even trade; the parties did not exchange any money. The Raufeisens bought the Longest Drive property in 1991 for only $149,000. Mr. Raufeisen acknowledged that the subject house was newer than the Longest Drive house and that it had been listed for sale at $192,000. But it sat vacant for three years until the Raufeisens traded for it.

b) The Raufeisens also contend that the subject property's location detracts from its value. It sits within 100 feet of Interstate 65. *Id.; see also Pet'rs Ex. 4.* Traffic noise has increased dramatically since the Raufeisens acquired the property, and it is almost unbearable at times. *Raufeisen testimony.* The Raufeisens therefore contend that, if they were to sell the property, they would have a difficult time "getting the money out of it." *Raufeisen argument.*

c) The Raufeisens could not find another property that was located as close to Interstate 65 as their property. But they did find a 1.6-acre vacant lot just north of their property. *Raufeisen testimony; see also Pet'rs Ex. 5.* The lot's owner was asking for between $25,000 and $30,000, but he did not expect to get that much. *Raufeisen testimony.* The Raufeisens also found a house that was the same size as their house, but that was located further away from Interstate 65. That property was assessed for less than the subject property. *Raufeisen testimony*; s*ee also Pet'rs Ex. 3.*

12. The Johnson County Assessor offered the following evidence and arguments:

a) The PTABOA hesitated to change the subject's property's assessment because it was confused about the details of the Raufeisens' home-trade. *Alexander testimony.*

b) Like the Raufeisens, local assessing officials could not find another property that was as close to Interstate-65 as the subject property. *Id.*

Record

13. The official record for this matter is made up of the following:

a) The Form 131 petition.

b) The digital recording of the hearing.

c) Exhibits[1]:

Petitioners Exhibit 1: Property Record Card (PRC) for subject property
Petitioners Exhibit 2: PRC for 1855 Longest Drive
Petitioners Exhibit 3: PRC for 1440 Paris Drive
Petitioners Exhibit 4: Aerial photograph of subject property
Petitioners Exhibit 5: Aerial photograph of subject property and nearby vacant lot

Board Exhibit A: Form 131 Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Hearing Sign-In sheet
Board Exhibit D: Letter of Authorization from Johnson County Assessor

d) These Findings and Conclusions.

Analysis

Burden of Proof

14. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

15. In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").

16. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

[1] The Johnson County Assessor did not submit any exhibits.

The Raufeisens' Case

17. The Raufeisens did not make a prima facie case for reducing the subject property's assessment below $197,000. The Board reaches this conclusion for the following reasons:

a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost, sales-comparison and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

b) A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption using evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

c) Regardless of the method used to rebut the assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006 assessment, that valuation date is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3

d) The Raufeisens did not offer any probative market-based evidence to rebut the subject property's assessment. At best, they identified the 1991 sale price for a property that they traded for the subject property. But that sale price was 14 years removed from the relevant valuation date of January 1, 2005. And the Raufeisens did not explain how it related to the subject property's value as of January 1, 2005.

e) The Raufeisens' other evidence fell even wider of the mark. First, they pointed to two nearby properties: a 1.6-acre vacant lot with an asking price between $25,000 and $30,000 and an improved property that was assessed for less than their property. According to Mr. Raufeisen, those values show that the subject property is assessed too high.

f) In a broad sense, Mr. Raufeisen's position correctly recognizes that one can estimate a given property's market value by comparing it to similar properties that have sold in the marketplace. *See* MANUAL at 13. Indeed, that is precisely the theory behind the sales-comparison approach to value. *Id.* But to apply that approach, a party to an assessment appeal must establish that the purportedly comparable properties sufficiently resemble the appealed property. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long*, 821 N.E.2d at 470. Instead, the party must explain how the properties' relevant characteristics compare to each other. *See Id.* at 470-71. Equally importantly, he or she must explain how any relevant differences between the properties affect their relative market values-in-use.

g) Mr. Raufeisen did not even remotely show how the subject property compared to either of the purportedly comparable properties. In fact, one of the properties is a vacant lot, while the subject property has improvements. He likewise failed to adjust the vacant lot's sale price or the improved property's assessment to reflect relevant differences between those properties and the subject property.

h) Also, Mr. Raufeisen needed to show that his analysis complied with generally accepted appraisal principles. But in looking to the purportedly comparable improved property's cost-based assessment rather than to its sale price, Mr. Raufeisen appears to have improperly mixed two traditional methodologies—the cost and sales-comparison approaches.

i) Second, Mr. Raufeisen argued that the subject property's proximity to Interstate-65 detracted from its value. While that may be true, the Raufeisens did not offer any market-based evidence to show the effect of the property's location on its market value-in-use.

j) Finally, there is some confusion about the amount of the subject property's 2006 assessment. Following a preliminary conference with the Raufeisens, the Needham Township Assessor determined that the property should be assessed for $197,000. But the PTABOA's determination lists an assessment of $209,700.

k) The PTABOA's decision controls. The statutes governing assessment appeals call for the PTABOA to make the final assessment determination at the local level. *See* Ind. Code § 6-1.15-1. And taxpayers appeal to the Board from the PTABOA's decision, not from the township assessor's initial determination. *See Id.; see also* Ind. Code § 6-1.15-3.

l) Nonetheless, the parties agreed that the "assessment of record" was $197,000. Indeed, that is the amount reflected on the subject property's record card. And the Johnson County Assessor did not even attempt to support the higher number reflected in the PTABOA's determination. On those unique facts, the Board finds that the assessment should be changed to $197,000.

Conclusion

18. The Raufeisens failed to make a prima facie case for any change in assessment beyond what the Needham Township Assessor agreed to. The Board therefore finds that the subject property's assessment should be reduced to $197,000. In all other respects, the Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the subject property's assessment should be changed to $197,000.

ISSUED: **March 11, 2008**

_____

Commissioner,
Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition:	79-022-06-1-5-00001
Petitioners:	Vassil Marinov and Venetka Marinova
Respondent:	Wabash Township Assessor (Tippecanoe County)
Parcel:	134-06817-0148
Assessment Year:	2006

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Tippecanoe County Property Tax Assessment Board of Appeals (PTABOA) by written document.

2. The PTABOA issued notice of its decision on October 26, 2006.

3. The Petitioners appealed to the Board by filing a Form 131 with the county assessor on December 7, 2006. They elected to have this case heard according to small claims procedures.

4. The Board issued a notice of hearing to the parties dated June 3, 2008.

5. The Board held an administrative hearing on July 22, 2008, before duly appointed Administrative Law Judge Debra Eads.

6. The following persons were present and sworn as witnesses at the hearing:
   For the Petitioners — Vassil Marinov and Venetka Marinova,
   For the Respondent — First Deputy County Assessor Georgia Jones and Deputy County Assessor Melissa Dickson. [1]

[1] For appeals of PTABOA determinations issued prior to July 1, 2007, the township assessor is typically the proper Respondent. The Wabash Township Assessor, however, did not appear at the hearing and the record contains no written authorization for county officials to provide representation. *See* Ind. Admin. Code tit. 52, r. 3-1-4. Nevertheless, nobody disputed the authority of the county assessor's deputies. Therefore, the Board will address the case on its merits.

Facts

7. The property is a single family dwelling located at 2315 Archer Court in West Lafayette.

8. The Administrative Law Judge did not conduct an on-site inspection of the property.

9. The PTABOA determined the assessment is $36,900 for land and $179,300 for improvements (total assessed value of $216,200).

10. The Petitioners requested a total assessment of $172,000.

Issue

11. Summary of the Petitioners' contentions in support of the assessment error:

    a. In conjunction with litigation, Dale Webster, SRA, MAI, appraised the subject property. He considered the quality of construction as "fair/average." He estimated a market value of $166,000 as of December 9, 2003. *Marinov testimony; Petitioners Exhibit 4.*

    b. Tippecanoe Circuit Court Judge Donald Daniel determined the fair market value of the home was $166,000 as of June 29, 2004. *Marinov testimony; Petitioners Exhibit 2.*

    c. Webster performed a second appraisal of Petitioners' property. Using the sales-comparison approach, he appraised the property for $172,000 as of November 21, 2006. *Marinov testimony; Petitioners Exhibit 3.*

    d. In connection with the Petitioners' 2007 assessment appeal, the Wabash Township Assessor agreed to assess the subject property for $173,200. *Marinov testimony; Dixon testimony; Petitioners Exhibit 1.*

12. Summary of Respondent's contentions in support of the assessment:

    a. The Webster appraisals reflect inaccurate market values. Each appraisal contained excessive and unsubstantiated "quality of construction" adjustments to the comparable properties ($15,000 to $55,000). *Dixon Testimony.* Further, the total percentage of unexplained adjustments was higher than normal, indicating the Webster comparables lack any substantive comparison to Petitioners' property. *Id.* Therefore, both Webster appraisals represent unreliable market values. *Dixon testimony, referring to Petitioners Exhibits 3 and 4; Respondent Exhibit B.*

b. The 2007 assessment value ($173,200) resulted from a settlement between Petitioners and the Wabash Township Assessor. Regardless of the disparity between the assessed property values, the 2007 settlement value bears no correlation to the 2005 market value. *Jones testimony.*

c. Data from 2004-2005 sales in Petitioners' neighborhood indicates properties characteristically similar to the subject property sold at prices ranging from $209,000 to $243,000. *Respondent Exhibit 4.* These sale prices support the 2005 valuation and represent a more appropriate comparison than the Webster comparables. *Dixon testimony; Respondent Exhibits A and C.*

Record

13. The official record for this matter consists of the following:

a. The Petition,

b. A digital recording of the hearing,

c. Petitioners Exhibit 1 – Notification of Final Assessment Determination (Form 115) for March 1, 2007,
Petitioners Exhibit 2 – June 2004 Findings of Fact and Conclusions of Law for litigation pertaining to the subject property[2],
Petitioners Exhibit 3 – November 2006 appraisal of the subject property,
Petitioners Exhibit 4 – December 2003 appraisal of the subject property,
Respondent Exhibit A – Assessor's comparables,
Respondent Exhibit B – Analysis grid comparing the subject property with the three comparable sales used in the 2006 appraisal and MLS data sheets for those four properties,
Respondent Exhibit C – List of 2004-2005 sales in the subject neighborhood,
Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Sign-in sheet.

d. These Findings and Conclusions.

[2] As offered, Petitioners' Exhibit 2 appears to be an incomplete copy—the pages are not numbered, but the copy contains an initial page with caption and heading "Findings Of Fact, Conclusions Of Law And Entry Of Final Judgment" together with "III. Conclusions Of Law" and "IV. Order And Entry Of Final Judgment." The Court's Findings Of Fact were not provided. The submitted copy contains a total of four pages.

Analysis

14. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). In making its case, the taxpayer must explain how each piece of evidence is relevant to the disputed assessment. *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis"). Once Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.; Meridian Towers,* 805 N.E.2d at 479.

15. The Petitioners failed to prove that the assessment should be changed. The Board reaches this decision for the following reasons:

    a. Real property is assessed on the basis of its "true tax value," which is "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

    b. Two appraisals, both by Dale Webster, are the main foundation for the Petitioners' claim. Mr. Webster did not testify. The conclusions for each appraisal appear to be based primarily on the sales comparison approach—each appraisal used three comparable sales (for a total of six). The Respondent attacked the credibility of the appraisals because the adjustments Mr. Webster applied to the comparables were

extremely large, especially the adjustments for quality of construction. The adjustment for that item alone on each comparable were as follows:

address	sale price	quality of construction adjustment
2802 Ibis Ct.	$219,000	-$50,000
2106 Longspur	$195,000	-$40,000
2217 Longspur	$197,000	-$55,000
2808 Ibis Ct.	$184,000	-$35,000
2193 Cousteau	$195,142	-$30,000
3331 Humboldt	$173,000	-$15,000

The 2006 appraisal shows that the gross adjustments for the comparables were 40.4%, 34.9%, and 49.3%. (The 2003 appraisal does not identify the percentages of gross adjustments.) These adjustments appear to be very large and they lack any kind of detailed explanation, either in the appraisal or through testimony. These points seriously detract from the credibility of the value conclusions that Mr. Webster reached in both appraisals.

c. The Petitioners' evidence about the Tippecanoe Circuit Court determination establishes that there was some kind of breach of contract action between the Petitioners and their home builder. The Conclusions Of Law state that the Petitioners failed to carry their burden of establishing the builder breached his contract with them and that the builder "provided a habitable house, substantially on time and substantially in compliance with the Marinovs' reasonable requirements." That Court concluded "the fair market value of the work as performed is $166,000.00. The Court finds that the fair market value of the Home is $166,000.00 and Orders the sale of the Home ... to the Marinovs at that price." *Petitioners' Exhibit 2.* The Petitioners offered conclusory testimony that this amount included everything. But such conclusory testimony is not sufficient to prove that amount actually represents the total market value-in-use of the property. Most significantly, the evidence does not establish whether or not the $166,000 figure includes land value, or only the house.

d. But ultimately, the credibility of the appraisals is not the decisive question in this case. A 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor,* 821 N.E.2nd 466, 471 (Ind. Tax Ct. 2005).

e. Although the Petitioners introduced evidence of the parcel's value on several dates, they failed to explain how the 2003 or 2006 appraisal values or the 2004 Circuit Court finding (which was based on the 2003 appraisal) relate to the required valuation date of January 1, 2005. Accordingly, that evidence has no probative value. *Id.*

f. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, the assessed value for 2007 is not probative evidence of the value for the 2006 assessment.

16. Where Petitioner fails to support an appeal with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

17. The Petitioners failed to establish a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the 2006 assessment will not be changed.

ISSUED: _____

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.:	**50-013-06-1-5-00105**
Petitioner:	**Donald F. Elliott, Jr.**
Respondent:	**Marshall County Assessor**
Parcel No.:	**50-21-27-000-067-000-013**
Assessment Year:	**2006**

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Marshall County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated April 26, 2007.

2. The Petitioner received notice of the decision of the PTABOA on January 31, 2008.

3. The Petitioner filed a Form 131 petition with the Board on March 7, 2008. The Petitioner elected to have this case heard according to the Board's small claim procedures.

4. The Board issued a notice of hearing to the parties dated June 4, 2008.

5. The Board held an administrative hearing on August 6, 2008, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.

6. The following persons were present and sworn in at hearing:

   a. For Petitioner: Donald F. Elliott, Jr., owner of the property

   b. For Respondent: Debra A. Dunning, Marshall County Assessor
   Jennifer Becker, Indiana Assessment Service

Facts

7. The property under appeal is a rear lot 57' x 118', with a 14' x 24' detached garage located at 2014 East Shore Drive, Culver, Union Township, in Marshall County, Indiana (Lot 13).

8. The ALJ did not conduct an on-site inspection of the subject property.

9. The PTABOA determined the assessed value to be $209,900 for the land and $10,600 for the improvement, for a total assessed value of $220,500.

10. At the hearing, the Petitioner requested the assessed value to be $68,000 for the land and $10,600 for the improvement, for a total assessed value of $78,600.[1]

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:

    a. The Petitioner owns property on Lake Maxinkuckee. *Elliott testimony.* According to the Petitioner, he owns one lot fully (Lot 1) and fifteen feet of an adjoining lot (Lot 2), both of which extend to the lake. *Id.* He also owns a rear lot adjoining Lot 1, Lot 13, which is the parcel at issue in this appeal. *Id.* Mr. Elliott testified that Lot 13 is small and flat and has no view of the lake. *Id.* The Petitioner contends that due to the size of the property, there is only 20 feet which can be built upon pursuant to Culver's zoning restrictions. *Id.* In support of this contention, the Petitioner submitted a photograph and the Culver, Indiana – Zoning ordinance. *Petitioner Exhibits 3 and 18.* Lot 13, however, contains a garage and driveway for parking, because "in summer cottages, parking is a problem." *Elliott testimony.*

    b. The Petitioner contends that the assessed value of the land on Lot 13 is overstated in comparison with properties in the surrounding area. *Elliott testimony.* According to Mr. Elliott, the Board determined in *Richard J. Kortenhoven v. Department of Local Government Finance,* Petition No. 45-028-02-1-5-00628, that a petitioner could use comparable assessments to establish the value of a property under appeal. *Petitioner Exhibit 17; Elliott testimony.*

    c. The Petitioner argues that comparable lots within the same area have assessed values ranging from $62,070 to $68,260. *Elliott testimony; Petitioner Exhibits 4 and 7.* These assessed values are substantially lower than the assessed value of Lot 13 which is assessed for $209,900. *Elliott testimony.* In support of this

[1] On the Form 131 appeal, Mr. Elliott requested the assessed value to be $67,968 for the land and $10,600 for the improvement, for a total assessed value of $78,568.

contention, Mr. Elliott presented assessment information on two lots. *Id.* The first lot is located at 1346 East Shore Drive. *Petitioner Exhibits 1 and 16; Id.* The lot is a slightly smaller, corner lot that has no view of the lake. *Id.* It has a guest house, and is located on a golf course. *Id.* It is also impeded by zoning restrictions like the subject property. *Id.* The second lot is Parcel No. 50212700002900013, which is the same size as the subject property. *Id.* The parcel has a detached garage and parking area. *Id.* Parcel No. 50212700002900013, however, is located across the street, which is classified as a different neighborhood according to the assessor's records. *Id.* The Petitioner argues that the subject property is similar to the comparable lots. *Elliott testimony.* Therefore, the Petitioner contends, the market value-in-use of the land should be no more than $69,968. *Petitioner Exhibit 13; Id.*

d. Further, the Petitioner contends, the land was assessed incorrectly. *Elliott testimony.* According to the Petitioner, the lot under appeal is located in the Maxinkuckee (Max) Lakefront East neighborhood, which has no established land acreage base rate. *Id.* Across the street in the area designated as the Max Off Lake neighborhood, however, the assessor established an acreage base rate of $180,000 per acre. *Petitioner Exhibits 1, 5 and 6; Elliott testimony.* The Petitioner argues that, converting the lot from a front foot basis to acreage rate, the parcel is only .16 of an acre. *Elliott testimony.* If the assessor applied a base rate of $180,000 per acre, the subject property would be valued at $67,968. *Petitioner Exhibits 1 and 6; Id.* According to the Petitioner, this is further indication that the land under appeal is overstated. *Id.*

e. Finally, the Petitioner argues that the county applied the rear lot calculation on the land incorrectly. *Elliott testimony.* According the Petitioner, in applying the REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A (GUIDELINES) to the land, the assessor was required to add the depth of Lot 1 (the Petitioner's lakefront lot) to the depth of the rear lot (Lot 13), which totals 345 feet. *Petitioner Exhibit 9; Id.* The total depth is then converted into a factor, which for 345 feet is 1.11. *Id.* The next step is to determine the depth factor of Lot 1, which is 1.03. *Id.* Then, subtracting the overall depth factor of 1.11 from the Lot 1 depth factor of 1.03, the depth factor to be applied to the rear lot is .08. *Id.* The .08 is then multiplied by the land base rate of $15,344, to determine the adjusted land rate. *Id.* The adjusted rate is then taken times the effective frontage of the subject property, which results in an assessed value of approximately $68,000. *Id.*

12. Summary of Respondent's contentions in support of the assessment:

a. The Respondent contends that Lot 13 is properly assessed. *Becker testimony.* According to the Respondent, the land has been valued as a rear lot, in accordance with instructions set forth in the GUIDELINES, which is consistent with all rear lots of other parcels in the neighborhood and surrounding area. *Respondent Exhibits*

2, 4, 5 and 6; Id. In addition, the Respondent contends all lots including the Petitioner's which are located in the Max Lakefront East neighborhood were valued on a frontage basis. *Id.* Therefore, the Petitioner's argument that Lot 13 should be valued on an acreage basis is not applicable. *Id.*

b. The Respondent further argues that the Petitioner's comparative properties are not comparable to the subject property. *Becker testimony.* According to Ms. Becker, the property at 1346 East Shore Drive is only 57 feet deep, whereas Lot 13 is 118 feet deep. *Respondent Exhibit 5; Becker testimony.* Therefore, when applying the GUIDELINES, the depth factor is much lower than the subject property's depth factor. *Id.* This results in a lower adjusted rate and ultimately accounts for the difference in value. *Id.* In addition, the Respondent contends that Parcel No. 502127000029000013 is located in a neighborhood that is designated "off-water," while the subject property is located in an "on-water" neighborhood. Thus, the Respondent argues, the properties would not have the same aesthetic value, which is reflected in the land base rate. *Id.*

c. The Respondent also argues that the Petitioner erred in calculating the value of Lot 13. *Becker testimony.* According to Ms. Becker, to determine the overall depth, the lot located immediately in front of the rear lot and the actual rear lot are measured as if they are one lot and a depth factor is determined. *Respondent Exhibit 4; Id.* Then a depth factor is calculated on the front lot, which is subtracted from the overall depth factor to determine the depth factor to be applied to the rear lot. *Id.* Here, the depth factor for Lot 13 is .24. *Becker testimony.* When the depth factor is applied to the land base rate of $15,344, the adjust land rate is $3,683. *Id.* The adjusted rate of $3,683 is then multiplied by the lot's effective frontage of 57, which results in a land value of $209,900. *Id.*

d. Finally, the Respondent contends the property is correctly assessed at $209,900. *Becker testimony.* According to the Respondent, a property in the same area that consisted of a rear lot and a front lot with a dwelling and detached garage sold for $1,200,000 on June 6, 2005. *Respondent Exhibit 6; Id.* In support of this contention, the Respondent submitted an aerial map and property record card. *Id.* The Respondent contends that by applying the allocation method to the $1,200,000, the rear lot would be approximately 25% of the sales price or $258,546. *Id.* Thus, the Respondent argues, the county has correctly assessed property in the subject area.

Record

13. The official record for this matter is made up of the following:

a. The Form 131 petition and related attachments.

b. The digital recording of the hearing.

c. Exhibits:

Petitioner Exhibit 1 – Trial brief submitted by Donald F. Elliott, Jr., which contains the following:
Exhibit A – plat map of the area,
Exhibit B – page 73 of the REAL PROPERTY ASSESSMENT GUIDELINES,
Exhibit C – map of Lake Maxinkuckee,
Petitioner Exhibit 2 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,
Petitioner Exhibit 3 – Aerial map and property record sheet for 2014 East Shore Drive and warranty deed dated August 16, 1955,
Petitioner Exhibit 4 – Aerial map and property record sheet for 1346 East Shore Drive and warranty deed dated July 7, 1969,
Petitioner Exhibit 5 – Union Township neighborhood base rate schedule,
Petitioner Exhibit 6 – Petitioner's schedule of properties in Max Off Lake East under $180,000 acreage base rate,
Petitioner Exhibit 7 – Aerial map and property record sheet for Parcel No. 502127000029000013,
Petitioner Exhibit 8 – Notice of Assessment of Land and Structures – Form 11 R/A – C/I,
Petitioner Exhibit 9 – Brief and testimony of Donald Elliott, Jr., from the Marshall County Property Tax Assessment Board of Appeals hearing,
Petitioner Exhibit 10 – Union Township response to Petitioner Issues,
Petitioner Exhibit 11 – Union Township representative's response to Petitioner's evidence presented at the PTABOA hearing, dated January 17, 2008,
Petitioner Exhibit 12 – Petitioner's reply to the township's written rebuttal,
Petitioner Exhibit 13 – Plat map with Petitioner's rear lot calculation,
Petitioner Exhibit 14 – Aerial map and property record sheet for Parcel No. 502127000103000013,
Petitioner Exhibit 15 – Aerial map and property record sheet for Parcel No. 502127000104000013,
Petitioner Exhibit 16 – Comparable fact sheet between Lot 13 and 1346 East Shore Drive,
Petitioner Exhibit 17 – Indiana Board of Tax Review final determination in *Richard J. Kortenhoven v. Department of Local*

Government Finance, Petition No. 45-028-02-1-5-00628,
Petitioner Exhibit 18 – Culver, Indiana – Zoning Ordinance,

Respondent Exhibit 1 – Notice of Appearance of Consultant on behalf of Assessor,
Respondent Exhibit 2 – Property record card for Donald F. Elliott, Jr.,
Respondent Exhibit 3 – Aerial map of the area,
Respondent Exhibit 4 – Page 49, 50, 51 and 52 of the REAL PROPERTY ASSESSMENT GUIDELINES,
Respondent Exhibit 5 – Respondent's Rebuttal sheet showing the various pricing calculations on lots,
Respondent Exhibit 6 – Aerial map and two property record cards for Parcel No. 502127000103000013,
Respondent Exhibit 7 – Respondent Signature and Attestation Sheet, dated August 28, 2008,

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").

c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official

must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner failed to raise a prima facie case for a reduction in value. The Board reached this decision for the following reasons:

a. Real property is assessed based on "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, for the property." Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual's definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Regardless of the method used to show a property's market value-in-use, however, a 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Petitioners who present evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of January 1, 2005. *See Long v. Wayne Township Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

b. Here, the Petitioner contends his property is over-valued based on the assessment of neighboring properties. *Petitioner Exhibits 4, 7 and 16.* This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor,* 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the assessed value does not accurately reflect the property's market value-in-use. [2] *Id.* The Petitioner presented no evidence of the market value of the subject property to show its assessment does not reflect the market value-in-use of the property. Therefore the Petitioner failed to raise a prima facie case his property is over-valued.

c. Next, the Petitioner contends that the Respondent's methodology of assessing the subject property was not in accordance with the 2002 REAL PROPERTY ASSESSMENT MANUAL. The Petitioner first argues that the land should be

[2] The Petitioner argues that the Board determined in *Richard J. Kortenhoven v. Department of Local Government Finance,* Petition No. 45-028-02-1-5-00628, that a petitioner could use comparable assessments to establish the value of a property under appeal. In that case, as the Respondent here notes, the Department of Local Government Finance did not dispute the petitioner's value. Further, that decision was issued on May 27, 2005, which predates the Tax Court decisions in *Westfield Golf* and *Eckerling.*

assessed by applying an acreage value from an adjacent neighborhood rather than valued on a front foot basis. *Elliott Testimony.* An assessor, however, is given the discretion to select "the most applicable pricing method for the neighborhood," and the Petitioner failed to submit evidence that the front foot basis was not applicable. REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A at 16. Second, the Petitioner argued that the Respondent's rear lot calculation was applied incorrectly. The conflict between the party's divergent figures turns on the meaning of "front lot" in the Guidelines. While the Petitioner made the assumption that Lot 1 should be treated as the front lot, the Respondent correctly defined the front lot as the portion of 1346 East Shore Drive which lies between Lot 13 and Lake Maxinkuckee.[3] Thus, the assessor did not err in its assessment of the land value on the subject property.

d. Even if the assessor had erred in its calculation, which it did not, a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor,* 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006). Instead, the Petitioner must show the assessment does not accurately reflect the subject property's market value-in-use. *Id. See also P/A Builders & Developers, LLC v. Jennings County Assessor,* 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing an assessor's technical failure to comply strictly with the Guidelines). Again, because the Petitioner failed to present evidence of the market value-in-use of the property, the Petitioner failed to raise a prima facie case his property is over-valued.

e. Finally, to the extent that the Petitioner can be seen to argue that the land value on the subject property should be adjusted or receive a negative influence factor because the lot is hindered by its size, irregular shape, lack of a lake view, or zoning restrictions, that argument is not supported by sufficient evidence. The Board notes that Lot 13 is merely a small part of a larger property owned by the Petitioner. While Lot 13 may be seen to be negatively impacted by its size, lack of lake view or zoning restrictions when viewed in a vacuum, there is no evidence that the Petitioner's property as a whole has such negative influences.

f. Where the Petitioner has not supported his claims with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

[3] The plain meaning of the term "front lot" implies that it is in front of, and not adjacent to, the rear lot. The Petitioner has offered no substantive rebuttal to this plain meaning.

Conclusion

16. The Petitioner failed to establish a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

ISSUED: _____

_____
Chairman,
Indiana Board of Tax Review

_____
Commissioner,
Indiana Board of Tax Review

_____
Commissioner,
Indiana Board of Tax Review

REPRESENTATIVE FOR PETITIONER: Deborah Albright, Attorney
Monday Jones & Albright

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney
Meighen & Associates, P.C.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

CIRCLE G SADDLE CLUB, INC.,	)	Petition No.: 27-007-06-2-8-00001
Petitioner,	)	Parcel No.: 0817-300-011.000-07
v.	)	Grant County
GRANT COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS,	)	Monroe Township
Respondent.	)	Assessment Year: 2006

Appeal from the Final Determination of the
Grant County Property Tax Assessment Board of Appeals

July 21, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), has reviewed the evidence and arguments presented in this case. The Board now enters findings of fact and conclusions of law on the following issue: Is the Circle G Saddle Club's real property, which includes land, a show ring, an announcer's stand, a refreshment stand, and a hall-type building with kitchen and restrooms, entitled to an educational or charitable tax exemption based on Ind. Code § 6-1.1-10-16? The short answer is no—the evidence fails to prove the subject property is predominantly used for educational or charitable purposes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. Circle G Saddle Club, Inc. (Circle G) filed an Application for Property Tax Exemption (Form 136) for the 2006 assessment year on April 10, 2006. At that time Circle G stated the property is used to operate a nonprofit saddle or riding club and claimed 100% exemption. This application did not indicate the claim was based on charitable or educational exemption pursuant to Ind. Code § 6-1.1-10-16.

2. The Grant County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on August 29, 2006. The PTABOA concluded the property is 100% taxable.

3. Pursuant to Ind. Code § 6-1.1-11-7, Circle G filed a Petition for Review of Exemption (Form 132) on September 19, 2006.[1] This document also did not indicate the claim was based on charitable or educational exemption pursuant to Ind. Code § 6-1.1-10-16, but rather, it stated the property should be exempt because Circle G is a nonprofit club. The Form 132 included the following explanation:

> Circle G is a nonprofit club. Owned by its members & maintained by its Board of Directors. The club is supported by donations & dues paid by its members. One Horse Show is put on a year to raise money for winter expenses.
>
> At no time does the club generate a profit. All money goes back into the club for the enjoyment of its members & family.
>
> Circle G was started in 1942 to provide education on horse safety & for the enjoyment of family with horses. This club still lives strong today because of the good things it provides its members....

[1] The original Form 132 Petition showed the year of appeal as 2007. The Petitioner revised the Petition on August 8, 2007, changing the assessment year under appeal from 2007 to 2006. The revised petition was received by the Grant County Assessor on August 9, 2007, and by the Board on August 15, 2007.

Hearing Facts and Other Matters of Record

4. The subject property is a horse riding club located at 1529 South 700 East, Marion, Indiana. It has approximately 10 acres of land. It also includes a hall-type block building with kitchen and restrooms, a refreshment stand, a ring, and an announcer's stand. There are no barns.[2]

5. Patti Kindler, the duly designated Administrative Law Judge, held the hearing in Marion on April 9, 2008. She did not conduct an on-site inspection of the property.

6. Circle G's President, Clifford Arnold, and its Treasurer, Nicole Scott, testified at the hearing. The Respondent did not present any witnesses.

7. Neither party offered any exhibits. Nevertheless, Circle G's attorney requested that the Board "consider" the documents submitted with the application, which she simply described as the bylaws and the corporate charter for this club. The Respondent made no objection and nothing further was said at the hearing regarding those documents. Bylaws for Circle G were among those attachments, but a corporate charter was not. And there were several additional attachments that nobody mentioned. They include what appear to be copies of the 2007 tax bills for the subject property (part A for $355 and part B for $355), the Notice Of Action On Exemption Application Form 120, the Notice Of Assessment Form 11 R/A, a "Business Entity Report" for Circle G dated May 30, 2007, the property record card, five pages of information about the subject property (including a photograph) from assessment records, and exemption records from Grant County Treasurer relating to the subject property for 2002, 2003, 2005, and 2006. The failure to lay a proper foundation, to offer the documents as exhibits, and to establish how they might relate to the case creates unfortunate, unnecessary ambiguity in the record. Under these circumstances, it is doubtful that the Board should "consider" such documents any further in reaching a determination on any case—if the Respondent had objected, it would not do so here. The process of properly offering exhibits as evidence is not a

[2] The Board gleaned the acreage from the tax bills, treasurer's exemption records and property record card attached to the Petition For Review. The rest of the description is based on Clifford Arnold's testimony.

useless, procedural trap. Identifying what a document is, proving that it is genuine, and establishing its relevance to the issues of a case are significant points that help to judge the credibility and weight that should be attached to it. Therefore, while the Board has "considered" the attachments, it determines they have little or no probative value on the exemption question in this case.

8. The following items are recognized as part of the record of the proceedings:

Board Exhibit A – Form 132 Petition with attachments,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Order Regarding Conduct of Exemption Hearing,
Board Exhibit E – Notice of Appearance from the Petitioner's Attorney,
Board Exhibit F – Notice of Appearance from the Respondent's Attorney.

Petitioner's Contentions

9. Circle G is the oldest riding club in continual operation in the state. It requests a 100% exemption for land and improvements. Ind. Code § 6-1.1-10-16 allows exemptions for land and improvements used for charitable and educational purposes. The club participates in educational and charitable activities in its support of the local 4-H program. Those activities are enough to qualify for the exemption. *Albright argument, citing Sahara Grotto & Styx, Inc. v. State Bd. of Tax Comm'rs,* 261 N.E.2d 873 (Ind. Ct. App. 1970).

10. Circle G was founded as a not-for-profit entity in 1942. Its only income comes from membership dues and a single horse show that it sponsors each year. *Arnold testimony.*

11. "The Club is a non-profit organization, solely for the purpose of social and recreational activities for its members, their families, and their guests, and the benefits thereof." *Bylaws at 1, attachment to Board Exhibit A.* The club's treasurer testified to a somewhat expanded purpose: "Circle G is a club that was founded solely for the purpose of recreational and social activities for its members and the education and safety and well-being of horses." *Scott testimony.*

12. Once a month Circle G has a "social" for members and guests. *Arnold testimony; Scott testimony.* "[B]y using horses to get kids involved you're combining the families to get together and keeping the children involved with the animals in a way that they are busy with the animals and the socials and the activities that we have. It just gets the family more involved together instead of the parents off doing their own thing and the kids setting and watching TV." *Scott testimony.* The club also has 2 or 3 campouts at different locations. *Arnold testimony.*

13. At least twice a year, Circle G offers educational clinics on safety and education. During the last couple of years there were 3 or 4. They stress safety for the person and the animal. The clinics provide education on the proper way of doing things that is beneficial to the participant and the animal. Members of 4-H clubs from Grant and neighboring counties are invited. Circle G serves breakfast and lunch to the 4-H members and offers the use of its meeting hall for 4-H programs. A few years ago, Circle G hosted a banquet for 4-H members where it gave trophies and ribbons to the kids. Circle G also donates the proceeds from a class at its annual horse show to the Grant County 4-H horse club. *Arnold testimony.*

14. The only income Circle G receives is from membership dues and revenue from its horse shows. *Arnold testimony.*

15. The denial of exemption came as a surprise. The club had always been exempt. It was never an issue with the county. *Arnold testimony.*

Respondent's Contentions

16. The relevant exemption statutes are Ind. Code §§ 6-1.1-10-16 and 6-1.1-10-36.3. They require that a petitioner own, occupy and predominately use the property for an exempt (educational or charitable) purpose. Circle G must prove it qualifies. That burden is strictly construed. The lost revenue resulting from any tax exemption creates a burden

for other taxpayers. *Meighen argument, citing Monarch Steel Co., Inc., v. State Bd. of Tax Comm'rs,* 669 N.E.2d 199 (Ind. Tax Ct. 1996); *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs,* 671 N.E.2d 218 (Ind. Tax Ct. 1996).

17. Exemption for an educational use requires a substantial equivalency to instruction offered in tax supported schools and institutions. *Meighen argument, citing Dep't of Local Gov't Fin. v. Roller Skating Rink Operators Ass'n,* 853 N.E.2d 1262 (Ind. 2006). To get an exemption based on charitable or educational use of otherwise taxable property, the use must provide benefits society that justify the loss in revenue and it must be something different from the everyday acts of man. *Meighen argument, citing Indianapolis Osteopathic Hospital v. Dep't. of Local Gov't Fin.,* 818 N.E.2d 1009 (Ind. Tax Ct. 2004).

18. The support for 4-H and a few clinics are not enough to meet the "predominate use test" or prove Circle G relieves the government of an educational burden. The club's activities are primarily social and recreational for its members, families and guests. It is well established that social and recreational use does not qualify for a charitable or educational exemption. *Meighen argument, citing Sahara Grotto & Styx v. State Bd. of Tax Comm'rs,* 261 N.E.2d 873 (Ind. Ct. App. 1970); *State Bd. of Tax Comm'rs v. Fort Wayne Sports Club,* 258 N.E.2d 874 (Ind. Ct. App. 1970). The subject property is not used predominantly for an exempt purpose. *Meighen argument.*

Analysis

19. As a general proposition, all tangible property in Indiana is subject to property taxation. Ind. Code § 6-1.1-2-1. But Ind. Code § 6-1.1-10-16(a) provides an exception: "all or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes." If a property is exclusively used for exempt purposes, then it is totally exempt. If a property is predominantly used for exempt purposes, then it gets a partial exemption based on the percentage of exempt use. If a property is predominantly used for non-exempt purposes, then it gets no exemption. Ind. Code § 6-1.1-10-36.3(b). "Predominant use" means more

than 50% of the time that a property is used during the year that ends on the assessment date. Ind. Code § 6-1.1-10-36.3(a).

20. Anyone who seeks an exemption bears the burden of proving that the requirements for exemption are satisfied. *Indianapolis Osteopathic Hospital, Inc v. Dep't of Local Gov't Fin.*, 818 N.E. 2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel Co, Inc. v. State Bd. Of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Ass'n of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E 2d 936, 938 (Ind. Tax Ct. 1987).

21. In making its case, a taxpayer must explain how each piece of evidence is relevant to its claim. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board ... through every element of the analysis").

22. Circle G's status as a non-profit entity is undisputed. Both its original Form 136 Application and its Form 132 Petition to the Board indicate the non-profit status was the basis for the exemption claim, rather than educational or charitable use of the property. That status, however, does not help to determine this case because a non-profit status does not establish any inherent right to property tax exemption. *See Lincoln Hills Dev. Corp. v. State Bd. of Tax Comm'rs*, 521 N.E.2d 1360, 1361 (Ind. Tax Ct. 1998); *Raintree Friends Housing, Inc. v. Indiana Dep't of Rev.*, 667 N.E.2d 810, 816 n.8 (Ind. Tax Ct 1996).

23. Circle G donates the proceeds from a class at its horse show to the 4-H. While such a donation might be charitable giving, it also does not help to determine this case.[3] The requisite statutory test for an exemption is the predominant use of the property, not the amount of charitable giving. *State Bd. of Tax Comm'rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257 (Ind. 2002).

[3] No amount was specified for the donation. The record does not establish whether it was substantial or nominal. Consequently, even if the donation were relevant, it would be impossible to decide how much weight it carries in relation to the overall use of the property.

24. To repeat, this case must be decided based on the actual use of the subject property. The Respondent correctly observed that social and recreational use does not qualify for a charitable or educational exemption. *Sahara Grotto*, 261 N.E.2d at 878 (areas devoted to social activities not exempt); *Fort Wayne Sports Club*, 258 N.E.2d at 882 (not educational because property primarily used for recreational purposes). The evidence establishes some use that clearly does not qualify as either educational or charitable. Testimony about the monthly socials is consistent with the statement in the bylaws about the club being "solely for the purpose of social and recreational activities...." In addition, Circle G sponsors one horse show every year. Whether the subject property is used as the location for that show is unclear. If it is, there is no probative evidence that their horse show is charitable or educational. Circle G's failed to establish how much of the total use of the property falls into the social and recreational category, but it is clear that the subject property is not used exclusively for exempt purposes. Consequently, the predominant use test applies. Ind. Code § 6-1.1-10-36.3.

25. At the hearing, Circle G understandably focused its case on the activities that arguably have educational or charitable character. Clearly Circle G provides some support for local 4-H groups and it has educational clinics on the property at least twice a year. Even assuming, *arguendo*, that those uses are educational or charitable, the exemption claim must be denied.

26. When the predominant use test applies, the evidence must prove that more than 50% of the total usage is for exempt purposes before *any* exemption is allowed. *Id.* Circle G failed to quantify the amount of time devoted to 4-H groups or educational clinics. Without sufficient evidence to determine the relationship between the amount of non-exempt and exempt use of the property, it is impossible to determine predominant use or grant any exemption.

27. Undisputed evidence established that the property received an exemption in prior years. The evidence does not establish the reasons for allowing exemption in the past. This record does not indicate any prior determination that the exclusive or predominant use of

the subject property was educational or charitable. In Indiana, each year and each assessment stands alone. The exempt status for prior years does not prove an educational or charitable use exemption for this case. *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116 (Ind. Tax Ct. 1991).

28. The Petitioner failed to prove the subject property qualifies for any exemption.

SUMMARY OF FINAL DETERMINATION

29. The property is 100% taxable.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>

NATIONAL ASSOCIATION OF MINIATURE ENTHUSIASTS, Petitioner,

v.

STATE BOARD OF TAX COMMISSIONERS, Peggy Boehm, Chairman, Wanda K. Watts, Member, Gordon E. McIntyre, Member, Respondents.

No. 49T10-9507-TA-00061.

Tax Court of Indiana.

Sept. 18, 1996.

Association for general public interested in miniatures applied for charitable exemption from real property taxes. County board of review denied exemption and association appealed. The State Board of Tax Commissioners affirmed and association appealed. The Tax Court, Fisher, J., held that association was not entitled to exemption from real property taxation as charitable or educational organization.

Affirmed.

1. **Judgment** ⇐185(4)

It is insufficient for party to rely without specificity on entire assembled record to fend off or support motion for summary judgment. Trial Procedure Rule 56.

2. **Judgment** ⇐181(2)

If after reviewing designated evidentiary materials, trial court determines no genuine issue of material fact exists and party is entitled to judgment as matter of law, summary judgment may be granted to either movant or nonmovant. Trial Procedure Rule 56(C).

3. **Taxation** ⇐492.20

On appeal from State Board of Tax Commissioners, tax court may not consider facts that were not presented to State Board.

4. **Taxation** ⇐190

Exemptions from taxation are granted when there is expectation of benefit which will inure to public by reason of exemption.

5. **Taxation** ⇐204(2), 251.5

Exemption from taxation is strictly construed against taxpayer and in favor of state; taxpayer bears burden of proving it is entitled to exemption.

6. **Taxation** ⇐211

In determining whether property qualifies for tax exemption, predominant and primary use of property is controlling.

7. **Taxation** ⇐251.1

As condition precedent to being granted tax exemption under charitable or educational purpose clause, taxpayer must demonstrate that it provides present benefit to general public sufficient to justify loss of tax revenue. West's A.I.C. 6-1.1-10-16.

8. **Taxation** ⇐241.1(2)

Association for general public interested in miniatures which ran museum and conducted workshops was not entitled to exemption from real property taxation as charitable organization; operating museum and workshops to increase public's knowledge about miniatures did not relive human want and suffering. West's A.I.C. 6-1.1-10-16.

9. **Taxation** ⇐251.5

To qualify for charitable purpose exemption, organization must show relief of human want manifested by obviously charitable acts different from everyday purposes and activities of man in general. West's A.I.C. 6-1.1-10-16.

10. **Taxation** ⇐241.1(2)

Organization's declaration that it is charity does not make organization's activities and endeavors sort that law recognizes as charitable and, thus, entitled to tax exemption. West's A.I.C. 6-1.1-10-16.

11. **Taxation** ⇐242(2.1)

Association for general public interested in miniatures which ran library and museum and conducted workshops was not entitled to exemption from real property taxation as educational organization where any educational training provided through its museum, library, workshops, local clubs and house parties were merely incidental to its recreational and hobby activities. West's A.I.C. 6-1.1-10-16.

12. Taxation ⇐251.5

To qualify for educational purpose exemption, organization must show that it provides at least some substantial part of educational training which would otherwise be furnished by tax-supported schools. West's A.I.C. 6–1.1–10–16.

Joseph D. Geeslin Jr., Indianapolis, for Petitioner.

Pamela Carter, Attorney General of Indiana, and Ted J. Holaday, Deputy Attorney General, Indianapolis, for Respondent.

FISHER, Judge.

The National Association of Miniature Enthusiasts (NAME) appeals a final determination of the State Board of Tax Commissioners (State Board) assessing NAME's real and personal property for the March 31, 1992, assessment date.

FACTS AND PROCEDURAL HISTORY

NAME owns real and personal property in Clay Township, Hamilton County, Indiana. In May 1992, NAME applied for a charitable exemption pursuant to IND. CODE ANN. § 6–1.1–10–16 (1996). The Hamilton County Board of Review denied the exemption on June 30, 1992. NAME appealed to the State Board which held a hearing on July 14, 1994. The State Board issued an order and written findings on May 26, 1995, declaring NAME's real and personal property to be one hundred percent (100%) subject to taxation.[1] NAME appealed the State Board's ruling through an original tax appeal and is now before this court on its motion for summary judgment. Additional facts will be supplied below.

ISSUE

Whether NAME is entitled to an exemption from property taxation as a charitable or educational organization under IND. CODE ANN. § 6–1.1–10–16 (1996).

STANDARD OF REVIEW

[1] The court will grant a motion for summary judgment "only when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law." *Encyclopaedia Britannica, Inc. v. State Bd. of Tax Comm'rs,* 663 N.E.2d 1230, 1232 (Ind. Tax 1996); IND. TRIAL RULE 56(C). "To promote the expeditious resolution of lawsuits and conserve judicial resources, [each party to a summary judgment motion must] designate to the court all parts of pleadings, depositions, answers to interrogatories, admissions, matters of judicial notice, and any other matters on which it relies for purposes of the motion." *Rosi v. Business Furniture Corp.,* 615 N.E.2d 431, 434 (Ind.1993); IND. TRIAL RULE 56(C); *see also K & I Asphalt, Inc. v. Indiana Dep't of State Revenue,* 638 N.E.2d 901, 902 (Ind.Tax 1994). It is insufficient to rely without specificity on the entire assembled record to fend off or support a motion for summary judgment. *Indiana Waste Systems of Indiana, Inc. v. Indiana Dep't of State Revenue,* 633 N.E.2d 359, 362 (Ind.Tax 1994).

[2] On a motion for summary judgment, the movant must affirmatively show through designated evidence that (1) there is no genuine issue as to any material fact and (2) they are entitled to judgment as a matter of law. IND. TRIAL RULE 56(C). In determining whether a genuine issue of material fact exists, the court accepts as true all facts set forth by the non-moving party, resolves all doubts against the moving party, and construes all properly asserted facts and reasonable inferences in favor of the non-movant. *Maynard v. 84 Lumber Co.,* 657 N.E.2d 406, 408 (Ind.App.1995); *Hacienda Mexican Restaurant of Kalamazoo Corp. v. Hacienda Franchise Group, Inc.,* 641 N.E.2d 1036, 1041 (Ind.App.1994). If after reviewing the designated evidentiary materials, the court determines no genuine issue of material fact exists and a party is entitled to judgment as a matter of law, summary judgment may be granted to either the movant or the nonmovant. *Encyclopaedia,* 663 N.E.2d at 1232; *K & I Asphalt,* 638 N.E.2d at 903.

1. NAME's original application only requested a charitable exemption. The State Board examined whether NAME was exempt from property taxation under either the charitable or educational provision of IND. CODE ANN. § 6–1.1–10–16 (1996). Similarly, the parties in this case discuss and argue both the charitable and educational basis for exemption.

FINDINGS OF FACT

[3] This court may not consider facts that were not presented to the State Board. *Hi–Temp, Inc. of Decatur County v. State Bd. of Tax Comm'rs,* 645 N.E.2d 680, 682 (Ind.Tax 1995). In the instant case, the court finds the following facts to have been before the State Board.[2]

The property in question consists of a dwelling house, an outbuilding, the land upon which they sit, and personal property all located in Hamilton County. The dwelling house contains a museum, library, and administrative offices. NAME is a not-for-profit organization. NAME was granted a charitable exemption from Federal income tax under IRC § 501(c)(3) on June 5, 1991.

NAME is a trade association for the general public interested in miniatures. Its Articles of Incorporation declare NAME is "organized and shall be operated exclusively for charitable and educational purposes." *Articles of Incorp.* ¶ 3. The stated goals of NAME are to:

> [1] stimulate and enhance the interest and understanding of the general public in the construction and collection of miniatures as historical and creative art forms ... [2] provide instruction and training to those members of the general public interested in miniature building and collections through publications, workshops, permanent and temporary exhibitions, programs, conferences and conventions ... [3] recognize outstanding achievement in the creation and promotion of miniatures as an art form ... [4] stimulate the exchange of information through the support of regional groups of persons interested in miniature building and collecting ... [and 5] develop a permanent collection and museum devoted to the art of miniature construction for the benefit of the general public.

Articles of Incorp. ¶ 3(1). The activities of NAME include publishing the *Miniature Gazette,* a quarterly periodical; sponsoring a national houseparty and three to four (3–4) regional houseparties each year; promoting local clubs; maintaining a permanent collection and museum at its headquarters; and conducting workshops on miniatures.

The first floor of the dwelling contains the museum and library. There is no charge for admission to the museum and library; however, they are open to the public only by making an appointment. Workshops on miniatures are also conducted on the first floor. The entire second floor functions as the national headquarters of NAME. NAME employs four (4) persons to publish the *Miniature Gazette* and regional newsletters, plan and present houseparties, and support local clubs.

DISCUSSION & ANALYSIS

[4] Indiana subjects all tangible property to taxation. IND. CODE ANN. § 6–1.1–2–1 (1989); *see also State Bd. of Tax Comm'rs v. Fort Wayne Sport Club, Inc.,* 147 Ind.App. 129, 139, 258 N.E.2d 874, 881 (1970). Indiana provides property tax exemptions for certain types of property and for certain kinds of taxpayers. *See* IND. CODE ANN. § 6–1.1–1–6 (1989). "Generally, exemptions [from taxation] are granted when there is an expectation of a benefit which will inure to the public by reason of the exemption." *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs,* 550 N.E.2d 850, 854 (Ind.Tax 1990).

[5, 6] "Because an exemption releases property from the obligation of bearing its share of the cost of government and serves to disturb the equality and distribution of the common burden of government upon all property, an exemption from taxation is strictly construed" against the taxpayer and

2. On March 22, 1996, this court granted NAME's motion to strike the affidavits in evidence to the extent the affidavits did not state specific items of fact. "In order to be used in a summary judgment proceeding, an affidavit must be on personal knowledge, must set forth facts as would be admissible in evidence and must affirmatively show that the affiant is competent to testify as to the matters stated therein." *Sidney Rubin v. Doris Jean Johnson,* 550 N.E.2d 324, 327 (Ind. App.1990); IND. TRIAL RULE 56(E). "Mere assertion of conclusions of law or opinions in an affidavit will not suffice." *Id.* "All portions of an affidavit which cannot be said to have been clearly based on personal knowledge must be stricken." *Id.* Those portions of the affidavits in evidence which the court has accepted as factual are recited in this opinion.

in favor of the State. *St. Mary's Medical Center of Evansville, Inc. v. State of Indiana Bd. of Tax Comm'rs*, 534 N.E.2d 277, 280 (Ind.Tax 1989), *aff'd*, 571 N.E.2d 1247 (Ind. 1991). Moreover, the taxpayer bears the burden of proving it is entitled to an exemption. *Monarch Steel Co., Inc. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind.Tax 1993). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *Fort Wayne Sport Club*, 147 Ind.App. at 139, 258 N.E.2d at 881; *Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm'rs*, 145 Ind.App. 522, 532–33, 251 N.E.2d 673, 679 (Ind.App.1969).

[7] A specific exemption is provided for property which is "owned, occupied, and used by a person for educational, ... or charitable purposes." [3] IND. CODE ANN. § 6–1.1–10–16 (1996). As a condition precedent to being granted a tax exemption under the charitable or educational purpose clause, the taxpayer must demonstrate that it provides "a present benefit to the general public ... sufficient to justify the loss of tax revenue." *St. Mary's Medical Center*, 534 N.E.2d at 279; *see also Fort Wayne Sport Club*, 147 Ind.App. at 140, 258 N.E.2d at 881.

NAME claims that its property qualifies for an exemption under the charitable or educational purpose clause of IND. CODE ANN. § 6–1.1–10–16 (1996). The State Board, on the other hand, contends that NAME is not entitled to such an exemption because "the predominant use of NAME's property is promoting miniature construction and collection as a recreational activity and hobby." *State Board Order and Written Findings* at 3.

A. *CHARITABLE EXEMPTION*

[8, 9] To qualify for a charitable purpose exemption NAME must show "relief of human want ... manifested by obviously charitable acts different from the everyday purposes and activities of man in general." *Indianapolis Elks*, 145 Ind.App. at 540, 251 N.E.2d at 683. In *Indianapolis Elks*, the court found the Lodge to be fully taxable because the property was "used for drinking, eating, dancing, card games, swimming and general relaxation." *Id.* at 538, 251 N.E.2d at 682. The court agreed that the Lodge's facilities and activities suppressed human want and suffering but not to the degree which is required to qualify for a tax exemption. *Id.* The court held that even under the most lenient constitutional definition of charity, the Lodge was not entitled to the exemption because its dominant and primary purpose is social and recreation. *Id.* at 538–39, 251 N.E.2d at 682–83.

[10] Operating a museum for the public and enhancing the public's knowledge about miniatures, while a noble endeavor, does not relieve human want and suffering. *See Indianapolis Elks Bldg.*, 145 Ind.App. at 538–39, 251 N.E.2d at 682–83. The facts most favorable to NAME reveal that its property contains a museum and library with space available for conducting workshops—all relating to miniatures. It was granted a charitable exemption from Federal income tax under IRC section 501(c)(3). NAME's Articles of Incorporation state that it is organized and shall be operated exclusively for charitable and educational purposes. Similarly, its Code of Regulations declare new members support the educational and charitable purposes of NAME. Yet, declaring itself a charity does not make NAME's activities and endeavors the sort the law recognizes as charitable and therefore entitled to tax exemption. *Id.* at 539, 251 N.E.2d at 683. The court finds NAME's activities do not satisfy the requirements for a charitable exemption.

B. *EDUCATIONAL EXEMPTION*

[11, 12] To qualify for an educational purpose exemption, NAME must show that it "provide[s] at least some substantial part of the educational training which would otherwise be furnished by our tax supported schools." *Fort Wayne Sport Club*, 147 Ind.

3. IND. CODE ANN. § 6–1.1–10–16 (1996) further states that a tract of land is exempt from property taxation if "a building which is exempt under subsection (a) ... is situated on it, and ... the tract does not exceed [fifteen acres]."

App. at 140, 258 N.E.2d at 882. The educational exemption is available to taxpayers who provide instruction and training equivalent to that provided by tax supported institutions of higher learning and public schools because to the extent such offerings are utilized, the state is relieved of its financial obligation to furnish such instruction. *Id.* at 140, 258 N.E.2d at 881–82. In *Sport Club,* the court denied the exemption because "any educational benefits derived from [the soccer club's and athletic club's] operations [were] merely incidental" to the social and recreational activities that were the predominant uses to which the clubs were put. *Id.* at 140, 258 N.E.2d at 882.

Indiana law requires NAME to affirmatively show how its activities provide educational training that would otherwise be furnished by tax supported schools to be entitled to an educational exemption from taxation. Publishing a magazine and newsletter as well as organizing and supporting houseparties and local clubs are the focus of NAME's activities and efforts. Any educational training provided through NAME's museum, library, workshops, local clubs, and houseparties are merely incidental to its recreational and hobby activities. *See Fort Wayne Sport Club,* 147 Ind.App. at 140–41, 258 N.E.2d at 882 (holding record insufficient to establish educational purpose where athletic activities were dominant purpose of the property). To meet its burden, NAME would have needed to demonstrate how its activities educated the public on art, history, nature, science, or other subjects of instruction furnished by tax supported schools. Merely showing, as NAME has done, that information and instruction with respect to miniatures are available to the public is not sufficient to qualify for an educational exemption.

CONCLUSION

Given the standard of review set out above with respect to summary judgment, the Court finds there is no genuine issue of material fact and that the State Board is entitled to judgment as a matter of law. Accordingly, NAME's motion for summary judgment is DENIED and summary judgment is GRANTED in favor of the State Board. NAME is not entitled to an exemption from property taxation as a charitable or educational organization under IND. CODE ANN. § 6–1.1–10–16 (1996). The final determination of the State Board is AFFIRMED.

JOINT REPORT BY TAXPAYER / ASSESSOR TO THE COUNTY BOARD OF APPEALS OF A PRELIMINARY INFORMAL MEETING

State Form 53626 (5-08)
Prescribed by the Department of Local Government Finance

FORM 134

FOR OFFICE USE ONLY
Date received by County Board of Appeals (*month, day, year*)
Date received by County Auditor (*month, day, year*)

INSTRUCTIONS:

1. *This form must be completed and signed by both the taxpayer and the assessing official. The assessing official must forward this form to the County Auditor and the Property Tax Assessment Board of Appeals no later than ten (10) days after the preliminary informal meeting between the taxpayer and the undersigned assessing official.*
2. *The County Board of Appeals maintains the original report with copies provided to the County Auditor, Assessor, and taxpayer.*

TYPE OF ISSUE UNDER APPEAL

Assessment of (*check if applicable*):	Deduction for (*check if applicable*):	
☐ Real property	☐ Rehabilitated property (IC 6-1.1-12-25.5)	☐ ERA - Real property (IC 6-1.1-12.1-5)
☐ Personal property	☐ Resource Recovery System (IC 6-1.1-12-28.5)	☐ ERA - Vacant building (IC 6-1.1-12.1-5.3)
	☐ Coal, hydroelectric, or geothermal (IC 6-1.1-12-35.5)	☐ ERA - Personal property (IC 6-1.1-12.1-5.4)

SECTION 1 PROPERTY & PETITIONER INFORMATION

Assessment date: March 1, 20_____, payable in 20_____.	Parcel number	County	Township
Name of property owner		Telephone number ( )	
Mailing address of property owner (*number and street, city, state and ZIP code*)			
Address of property under appeal, if different (*number and street, city, state and ZIP code*)			
Name of authorized representative (*if different from taxpayer*)		Telephone number ( )	
Mailing address of authorized representative (*number and street, city, state and ZIP code*)		DLGF Taxing District number	

SECTION 2 RESULTS OF PRELIMINARY INFORMAL MEETING

Assessment date: March 1, 20_____, payable in 20_____.	LAND	IMPROVEMENTS	PERSONAL PROPERTY / DEDUCTIONS
Current assessment / deduction of record			
Taxpayer believes assessment / deduction should be:			
Assessor believes assessment / deduction should be:			

After the preliminary informal meeting, do the taxpayer and the assessor agree on the resolution of all issues? ☐ Yes ☐ No

If yes, explain the issues and changes made.

If both parties do not agree on all the issues, is there a partial agreement on some of the issues? ☐ Yes ☐ No

If yes, list the areas agreed upon.

If yes, list the areas not agreed upon.

If both parties disagree on all of the issues, the taxpayer and the assessor should list the issues in their comments section.

TAXPAYER COMMENTS

Explain reasons for disagreement or changes made.

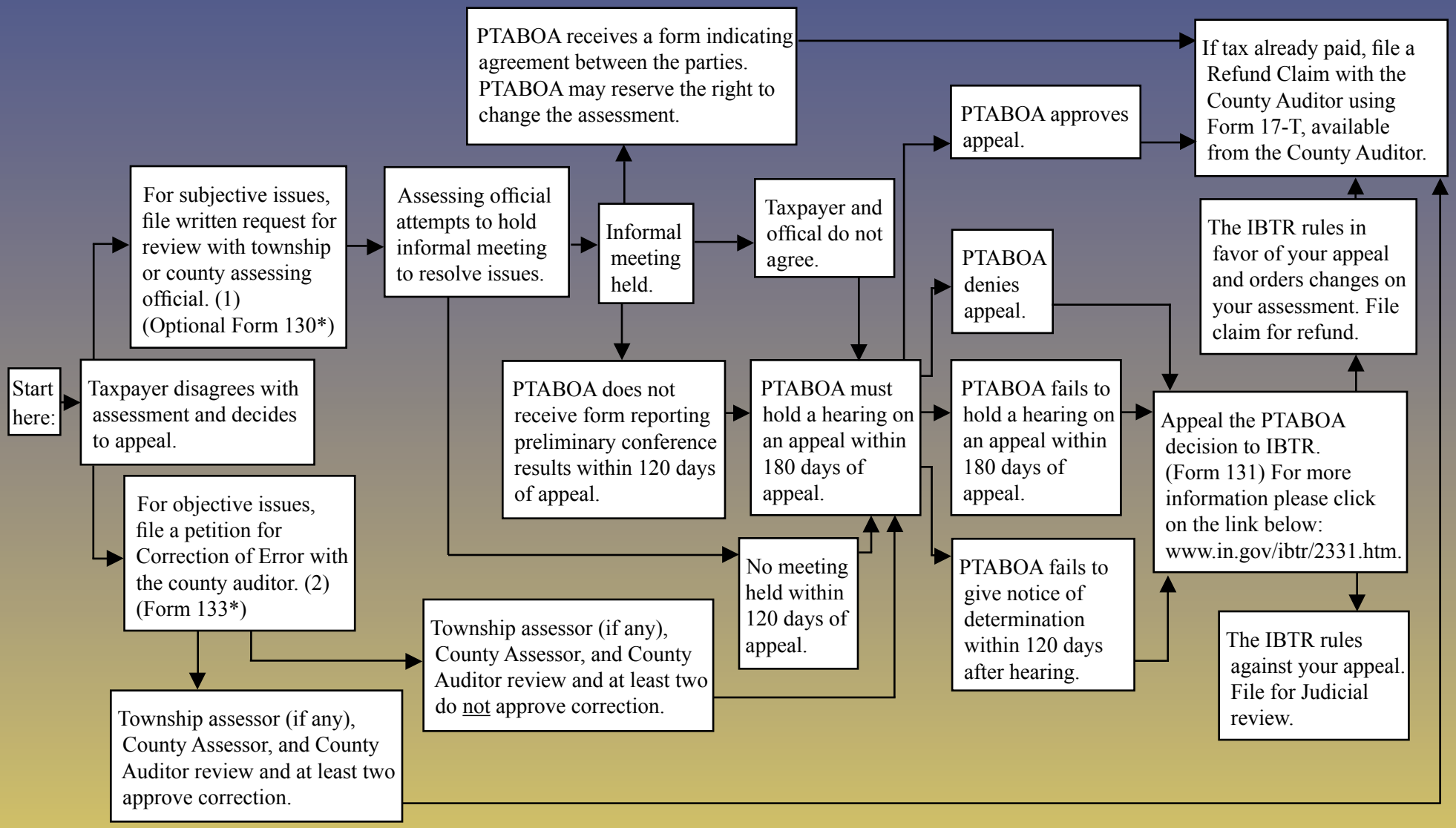
Signature of taxpayer	Date (*month, day, year*)

ASSESSOR COMMENTS

Explain reasons for disagreement or changes made.

Signature of assessor	Date (*month, day, year*)

Property Tax Assessment Appeals Process



(1) Subjective parts of the assessment are determinations made by a township assessor's subjective judgement.
(2) Objective issues are such things as mathematical miscalculations, factual errors or incorrect measurements.

* These forms are available on the Department of Local Government FinanceWeb site **www.in.gov/dlgf/** or from a township or county assessor.